HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

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Writ Petition No.2244 of 2000

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Between:

S. Abdul Rahim

…Petitioner

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And

The Transmission Corporation of
Andhra Pradesh Ltd. Rep. by its
Superintending Engineer (Operations),
Anantapur and another

…Respondents.

:: O R D E R ::

Counsel for the petitioner: Shri P. Chakravarthi

Counsel for the respondents: Shri Samineni Kishore

February 07, 2007

In this petition, the petitioner has prayed for quashing Memo No.SE/O/ATP/PO/ADM/S1/311/2000, dated 7-2-2000, vide which Superintending Engineer (Operation), Anantapur (hereinafter referred to as 'the Superintending Engineer') terminated his service from the post of Sub-Engineer (Trainee), A.P. Transco Limited.

A perusal of the pleadings of the parties and the documents produced by the petitioner shows that he had worked as contract labour from 3-10-1994 to 17-12-1999. This is clearly evinced from the

certificates issued by different contractors under whom he had worked. All the certificates have been duly countersigned by the officers of the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board'). For the sake of convenient reference, the consolidated certificate, which has been signed by Assistant Divisional Engineer, EHT Lines, A.P. Transco, Hindupur and Additional Assistant Engineer, Maintenance, A.P. Transco Limited, Hindupur is reproduced below:

C E R T I F I C A T E

This is to certify that Sri A. Abdul Rahim s/o.S.A. Gafroor, Hindupur has worked as Sub-Engineer at 220 KV sub-station, Hindupur under contract basis for the period from 03-10-1994 to 17-12-1999 without any break in service.

During the above period, his conduct and character were found satisfactory.

The details of his service are as follows:

S.No.	Period of Service	Name of the contractor
1.	03-10-1994 to 29-5-1995	Sri K. Narsimha, Regd. APSEB Contractor, Gooty
2.	30-5-1995 to 27-6-1995	Sri J. Laxman Rao, Regd. APSEB Contractor, Hindupur.
3.	28-6-1995 to 31-12-1996	Sri M.K. Laxmi Reddy, Regd. APSEB Contractor, Anantapur.
4.	1-1-1997 to 31-3-1999	Sri J. Laxman Rao, Regd. APSEB Contractor, Hindupur.
5.	1-4-1999 to 17-12-1999	Sri M. Habeed Basha, Regd. APSEB Contractor, Kadiri.

By having worked as contract labour for a period of more than two years and six months, as on 18-5-1997, the petitioner became eligible to be considered for regular appointment in the service of the Board in accordance with the policy contained in B.P.Ms.No.36, dated

18-5-1997. The Superintending Engineer did not consider his candidature. Instead, he selected and appointed 23 other persons as Trainee Sub-Engineers vide order dated 17-12-1999.

On coming to know of that order, the petitioner represented for consideration of his case for appointment as Trainee Sub-Engineer. His grievance was partially remedied when the Superintending Engineer issued order dated 6-1-2000 and appointed him as Trainee Sub-Engineer, Distribution Section-II, Anantapur. However, just after one month, the officer concerned issued the impugned memo and terminated the petitioner's service.

In the affidavit filed by him, the petitioner has averred that the action of the Superintending Engineer not to consider his candidature for appointment against the 50% vacancies in terms of B.P.Ms.No.36, dated 18-5-1997 has resulted in violation of his constitutional right to equality guaranteed under Articles 14 and 16 of the Constitution. He has questioned the impugned memo by contending that the action of the Superintending Engineer to terminate his service is arbitrary and discriminatory.

In the counter filed on behalf of the respondents, Shri B.S. Ramchandra Rao, Assistant Secretary/Legal, A.P. Transco has not controverted the petitioner's assertion that he had worked under the contractor from 3-10-1994 to 17-12-1999, but he has made an attempt to justify the termination of the petitioner's service by asserting that issue of the impugned memo was necessitated for accommodating Shri S.Md. Shamsho Zoha, whose service was terminated, but who succeeded in persuading the High Court in passing an order of interim injunction in WPMP.No.1072 of 2000 in Writ Petition No.845 of 2000.

I have heard learned counsel for the parties and carefully scrutinised the record. For the sake of convenient reference, the

relevant extracts of B.P.Ms.No.36, dated 18-5-1997 are reproduced below:

"4. The A.P.S.E. Board accordingly issues the following orders in supersession of the orders issued in the reference 2 & 3rd cited.

i) Ex-Casual Labour:

The Ex-Casual labour who were already interviewed but failed in the test and given second chance and also obtained interim orders from the High Court for consideration are only eligible for selection for appointment against 50% of the existing vacancies in accordance with the guidelines contained in Memo No.DP/DM-I./A3/1138/95-1, dt.26.9.1985 read with Memo No.D/DM-I/C2/2519/93 dt.14.9.93.

ii) Village Electricity Workers:

In terms of the agreement dated 5.3.96, the cases of the village Electricity Workers shall be considered for selection and appointment against 50% of the existing vacancies subject to the condition that they are not eligible to derive any benefit for their earlier services and on selection they will be appointed as fresh candidates in A.P.S.E. Board.

iii) Contract Labour:

The Contract labour other than those engaged in 33 abolished categories in generating stations shall be considered for selection and appointment against 50% existing vacancies.

5. The conditions for selection of the candidates from the above categories shall be as follows:

a) Age: Age shall be reckoned as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of age.

b) Educational Qualifications: Educational Qualifications shall be as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of educational qualifications or other relevant technical

qualifications with are prescribed in the service regulations for such appointment.

c) Seniority: The Seniority shall be reckoned based on the total period of service rendered by the respective candidates in the Unit as per muster rolls/wage register or as per the records maintained under the contract labour (Regulation and Abolition) Act, 1970. Separate seniority list shall be prepared for each category as per their eligibility. The continuous period of working shall be taken for purpose of reckoning in seniority in respect of village Electricity workers.

d) Rules of Reservation: The rule of reservation as per roster in terms of Reg.22 of A.P.S.E.B. Service Regulation Part-II shall be strictly followed.

e) Selection Committee:

i. Director personnel.

ii. Concerned Chief Engineer from Generating Station/Zone

iii. Deputy Secretary (Personnel)

iv. Director (Industrial Relations) –Member Convenor."

A reading of the above reproduced portions of the policy framed by the Board for considering the candidature of Ex-Casual Labour, Village Electricity Workers and Contract Labour shows that eligible persons are to be considered for appointment against the 50% vacancies as per their seniority. The persons who were selected and appointed vide order dated 17-12-1999 are not shown to be senior to the petitioner in terms of paragraph 5 (c) of B.P.Ms.No.36, dated 18-5-1997, which provides for determination of seniority on the basis of total period of service rendered by the prospective candidate in the unit as per the muster roll/wage register or as per the records maintained under the Contract Labour (Regulation and Abolition) Act, 1970 (for short, 'the 1970 Act'). Therefore, the denial of consideration of the petitioner's candidature for appointment as Trainee Sub-Engineer is

vitiated due to patent violation of the doctrine of equality enshrined in Article 14 of the Constitution.

Shri Samineni Kishore, learned counsel for the respondents produced some list which is said to have been prepared by the Chief Engineer, A.P. Transco and submitted that the candidature of the petitioner was rightly ignored because he had worked only for a period of 138 days, but I have not felt convinced because the learned counsel could not draw my attention to any contemporaneous evidence to prove that the certificates issued by the contractor, which were countersigned by different officers of the Board are fictitious or fabricated. Learned counsel also could not produce any tangible evidence to show that the list prepared by the Chief Engineer, A.P. Transco, which bears the date 7/12 (the year has not been recorded by the officer concerned) is based on the documentary evidence available with the contractor or the registers maintained by him under the 1970 Act. Therefore, the so-called list prepared by the Chief Engineer cannot be relied for the purpose of discarding the certificates issued by the Contractor, which, as mentioned above, were duly countersigned by the officers of the Board.

On the basis of the above discussion, I hold that the denial of consideration to the petitioner at the time of appointment of persons who were junior to him has resulted in violation of his fundamental right under Articles 14 and 16 of the Constitution. As a sequel to this, the termination of his service vide memo dated 7-2-2000 is liable to be declared illegal because the officer concerned proceeded under an erroneous assumption that the petitioner was junior to those who had been selected and appointed vide order dated 17-12-1999.

In the result, the writ petition is allowed. Memo dated 7-2-2000 issued by the Superintending Engineer is declared illegal and

quashed. The petitioner shall be reinstated with all consequential benefits.

G.S.SINGHVI, C.J.

February 07, 2007

svs